
Appeal Decision

Site visit made on 28 January 2020

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 10 March 2020

Appeal Ref: APP/J1915/W/19/3241810

Former Clay and Gravel Quarry, Quarry End Manor, St Marys Lane, Hertingfordbury, Hertford SG14 2LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Nigel Brunt against the decision of East Hertfordshire District Council.
 - The application Ref 3/19/1857/FUL, dated 11 September 2019, was refused by notice dated 6 November 2019.
 - The development proposed is the erection of house including restoration of former quarry and landscaping including the creation of a nature habitat.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and development plan policies;
 - The effect of the proposal on the openness of the Green Belt; and
 - If the development is inappropriate within the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

3. The proposed development is for one dwelling within a former quarry and is sited on the edge but outside of the village of Hertingfordbury, whilst located within the Metropolitan Green Belt. Policy GBR1 of the East Herts District Plan, 2018 (EHDP) deals with the Metropolitan Green Belt and advises that planning applications will be considered in line with the provisions of the National Planning Policy Framework (the Framework).
4. The Framework sets out the Government's planning policies for England and is an important material consideration in all planning decisions. Paragraph 145 of the Framework sets out that the construction of new buildings in the Green Belt

should be regarded as inappropriate development, unless it meets one or more of a list of exceptions. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

5. The exceptions are set out in paragraph 145 of the Framework, and include (e) limited infilling in villages and (g) limited infilling or the partial or complete redevelopment of previously developed land (PDL), whether redundant or in a continuing use which would not have a greater impact on the openness of the Green Belt than the existing development or would not cause substantial harm to the openness of the Green Belt where development would contribute to meeting an identified affordable housing need. There is no definition in the Framework or the EHDP of limited infilling and therefore, it is a matter of planning judgement for the decision-maker.
6. The appeal site is accessed from St Mary's Lane along an elevated block paved road, which is also a bridleway leading to the site entrance with the track continuing beyond the site. There are existing residential properties nearby, particularly close to the site access and along St Mary's Lane which may have had a previous historic association with the quarry. However, these are some distance away and not directly adjacent to the site itself. The proposed dwelling would be fairly central within the site and the curtilage of the dwelling would take up around 5% of the total quarry. The appeal site is clearly set back and away from St Mary's Lane and the existing residential development adjoining that road.
7. Although not within an isolated location due to the presence of the existing dwellings close to the access onto St Mary's Lane, having had regard to the High Court judgement¹ regarding paragraph 55 (now paragraph 79) of the Framework, this physical location would not result in a new isolated home that the Framework seeks to avoid. However, it would not fill any existing clear gap between the development or nearby properties that form part of the village. As such, I consider that the development would not be limited infilling in a village.
8. The appeal site is a former quarry that has been derelict for some time and not restored. It was subsequently used for the tipping of waste by local authorities. The appellant contends that the appeal site amounts to previously developed land (PDL) as there are no effective provisions for restoration of the appeal site through development control procedures following quarrying. In 2013, a previous application² at the site was granted on appeal³ for an internal service road within the site and associated re-grading of the deposited material of which conditions have been discharged. A further application⁴ was granted in 2015 at the site to regrade the land including the importation of inert fill, and restoration to agricultural use and the erection of an agricultural barn, of which the appellant confirms this has commenced.
9. The Framework supports development that makes efficient use of land, through the definition of PDL⁵, which includes land occupied by a permanent structure including the curtilage of developed land, however this does not go without

¹ Braintree District Council v Secretary of State for Communities and Local Government & Ors [2017] EWHC 2743 (Admin)

² Planning Application Reference: 3/12/0272/FP

³ APP/31915/A/12/2180792

⁴ Planning Application Reference: 3/13/1690/FP

⁵ Annex 2 of the Framework refers to the definition of previously developed land

being caveated. It excludes land that is or was last occupied by agricultural buildings, and land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures.

10. The evidence before me sets out that previous planning permissions at the site have included decontamination, restoration and remediation, with the principal aim of following remediation to permit an agricultural after-use. The appellant states 'the current owner has secured and improved the site to a degree' and previous schemes have commenced, but construction finance for the restoration could only be obtained against a dwelling use and not an agricultural use. I have no substantive evidence before me that the development management procedures would only relate to the closure of the quarry itself, rather than a subsequent planning permission for a different use and/or development or where the restoration may be less than certain coming forward. Therefore, the appeal site would not meet the definition of the Framework, and as such I do not consider that the site amounts to PDL.
11. In arriving at this conclusion, I have taken into account the previous appeal decision⁶. In paragraph 8 of that decision, the Inspector sets out that the appellant indicates that the original permission included conditions relating to the restoration of the site and that it would not meet the definition of previously developed land, I have no evidence to the contrary. Furthermore, the Inspector found that the dwelling would be inappropriate development in the Green Belt. As such, I have no reason to disagree with their findings, particularly as the case before me has similarities.
12. For the reasons given above, I conclude the proposal would be contrary to Policy GBR1 of the EHDP. Furthermore, it does not meet any exception in that of the Framework, with reference to paragraphs 145(e) and 145(g), as it would not form limited infilling in villages or amount to PDL.
13. As the appeal scheme would not meet any of the exceptions in paragraph 145 of the Framework, it would constitute inappropriate development in the Green Belt.

Openness

14. As set out in paragraph 133 of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, the essential characteristics thereof being its openness and permanence. The physical presence of built forms may affect openness, which can also have a visual element.
15. The proposed dwelling would be occupied within the central area of the former quarry pit, on land which is not occupied by any built form. The erection of a sizeable detached dwelling over three floors with outdoor terracing, new access, new parking, new hardstanding and domestic curtilage with associated paraphernalia would have a significant adverse impact on openness. Whilst the site is immediately enclosed by fencing and steep wooded embankments, including trees subject to a Tree Preservation Order, and I acknowledge the Landscape & Visual Impact Assessment⁷, it would still be visible from public views further along the bridleway and the site entrance. Given the proposal is

⁶ APP/J1915/W/18/3210401

⁷ Landscape & Visual Impact Assessment: Elizabeth Greenwood: 771.17

for built form of significant scale, bulk and massing, it would be clearly discernible in those views even if, supplementary landscaping was to be provided and it were to mature over time.

16. For the above reasons, the proposed development would harm the openness of the Green Belt in both visual and spatial terms. The scheme would therefore be contrary to the main aims of Green Belt policy at local and national levels, which I have set out above.

Other Considerations

17. The appellant contends that the provision of a self-build dwelling is a positive benefit in favour of the scheme. The Government within the Framework and Planning Policy Guidance (PPG) support such schemes to increase this type of development and places a legal duty on local planning authorities to enable such development. The definition of 'self-build and custom-build housing' is set out in the Framework⁸, and is based on the legal definitions contained in section 1(A1) and (A2) within the Self-build and Custom Housebuilding Act 2015 (as amended).
18. The appellant has also provided correspondence⁹ which suggest that the Council's self-build register has current unmet needs. Nonetheless, as set out in the PPG¹⁰ an Authority has 3 years to demonstrate that sufficient suitable permissions have been granted to meet a base period's demand. The time allowed to comply with the duty begins immediately after the end of the base period¹¹.
19. Notwithstanding the above, there is no evidence before me to suggest that the proposal would comply with the relevant legal definitions of self-building housing, or that it would be secured to meet a currently identified Council need. Furthermore, it does not appear that the appellant has applied or has confirmed their eligibility to be included on the Council's self-build register or the site is a self-build plot. As such, I can afford little weight to any perceived benefit of the proposal in that respect.
20. I have also had regard to the appeal decisions which have been brought to my attention, including the Woodville appeal decision¹², but the individual circumstances of that case differ from the proposals before me, including that it was not within the Green Belt, and was for 30 dwellings, unlike the one residential unit before me. In any event, the appeal is necessarily determined on its individual merits on the basis of the evidence before me.
21. There is an extant planning permission for an agricultural barn on the site. The appellant indicates this would be foregone and part of the proposed internal track would not be constructed. I acknowledge that the appeal scheme would be in a similar location and would have a smaller footprint and not exceed the overall scale of development of the previous scheme. Nonetheless, the appeal proposal would include an access drive, parking and terraces along the dwelling itself as well as associated domestic paraphernalia. The Framework at paragraph 145 (a) identifies buildings for agriculture as an exception to

⁸ Annex 2 of the Framework refers to the definition of a 'self-build and custom-build housing'.

⁹ Correspondence with LPA – Quarry Self Build Emails 1, 2, and 3: Dated 28/10/2019 & 29/10/2019

¹⁰ Paragraph: 023 Reference ID: 57-023-201760728: Revision date: 28 07 2017

¹¹ The Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016

¹² APP/G2435/W/18/3214451

inappropriate development and therefore do not require an assessment of their impact on openness within the Green Belt. As such, I attach little weight to the fallback position.

22. It was evident at the time of my site visit that the quarry sides have suffered subsidence, bank collapses and there are continued works at the site to stabilise the quarry embankments. It is clear that elements of this were included in previous planning permissions and could therefore be achieved without the proposed dwelling. Moreover, I have no substantive evidence which would lead me to consider that the bridleway is unsafe, or the site has security issues or in any case, that the resolution of such could only be secured through the proposed development.
23. The appellant indicates that substantial costs are involved for improvements and restoration, and financial cost implications have been provided¹³. I acknowledge the appellants assertions that wider benefits are the restoration of the despoiled and degraded land and the letters of support from interested parties that have been provided in that respect. Based on the evidence and my own observations, the restoration works would be of overall benefit to the site and therefore, I attach moderate weight to such matters.
24. I note that the Council have expressed additional concerns about the design and layout of the proposed development, these points were not raised as reasons for refusal. I acknowledge that the site has not been fully restored but overall it is relatively concealed from the wider rural area and is not a green field. The provision of supplementary landscaping and management would enhance the appearance of the site and is clearly identified to be provided as part of previous schemes without the proposed dwelling. In considering the contemporary design and materials, it would have a neutral effect in the location proposed and therefore, does not weigh in favour or against the proposal in this case.
25. The matters of contamination were addressed by the Council's environmental health officer and the Environment Agency. The Council confirm that the reason for refusal on the previous application has been overcome through investigations carried out at the site. Although, the Council has accepted this information to be adequate provided suitable worded conditions are imposed, this does not outweigh the harm I have already identified. I, therefore, consider that the absence of harm in that respect and in terms of other planning matters such as flood risk/drainage, landscaping, parking and access and biodiversity matters which could be addressed by conditions, are a neutral factor.
26. The proposed development would contribute to the supply and mix of housing by providing one market dwelling in a rural area. However, one house would be a relatively small contribution. Some economic benefits would arise from, for example, the purchase of building materials during the construction period and future occupiers would also contribute to the local economy and towards the viability of local services. This however would be minimal due to the quantum of development proposed. Similarly, any benefits arising from the sustainable construction methods of the dwelling including water and energy efficiency, given the modest scale of the development, such benefits would be minimal, and I attach limited weight.

¹³ Feasibility & Costs Estimate: ACA Surveyors, Ref: ac/GEN dated 17 May 2017

Planning Balance and Conclusion

27. The appeal scheme is inappropriate development in the Green Belt. This is harmful by definition. The proposal would reduce the Green Belt's openness, which gives rise to additional harm. In each case, these harms render the appeal scheme contrary to the aims of both the policies of the development plan, as I have identified them, and the relevant sections of the Framework.
28. Against this, the other considerations that have been advanced are not sufficient, either individually or cumulatively, to clearly outweigh the substantial weight to be given to the harm to the Green Belt I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
29. The proposed development would be contrary to the development plan and the Framework, taken as a whole. There are no other material considerations that would indicate that the proposed development should be determined other than in accordance with the development plan.
30. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

KA Taylor

INSPECTOR